

Donna Epps
Vice President
Federal Regulatory Advocacy



1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2527
Fax 202 336-7922
donna.m.epps@verizon.com

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Ex Parte

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68;**
Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92

Dear Ms. Dortch:

Verizon has previously explained why the Commission, if it addresses this subject in advance of the larger intercarrier compensation rulemaking, should confirm that, under its existing rules, neither reciprocal compensation nor ISP intercarrier compensation is due for virtual NXX calls.¹ That is because virtual NXX calls — no different from traditional foreign exchange calls, 1-800 calls, and standard dialed toll and long-distance calls — are interexchange calls and “exchange access” that is exempt from the Commission’s existing reciprocal compensation rules. Likewise, the ISP intercarrier compensation regime established in the *ISP Remand Order* does not apply to virtual NXX, or other interexchange, calls delivered to ISPs. Instead, as the D.C. Circuit has recognized, that regime was designed to address a specific source of regulatory arbitrage — state commission decisions finding that reciprocal compensation must be paid on calls to ISPs in the same local calling area as the calling party. A ruling that virtual NXX calls to ISPs are encompassed within that compensation regime would *increase* opportunities for regulatory arbitrage and create situations where a CLEC would receive *more* intercarrier compensation for serving ISPs than for serving voice customers.

¹ See Letter from Donna Epps, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 99-68 & 01-92 (filed Jan. 7, 2005) (“Verizon Jan. 7 Ex Parte”); Letter from Donna Epps, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 99-68 & 01-92 (filed Dec. 16, 2004) (“Verizon Dec. 16 Ex Parte”).

In recent ex partes, Pac-West, US LEC, and RCN (collectively, “Pac-West”), and AT&T have taken issue with these conclusions.² But their arguments are based on distortions of Verizon’s position, misreadings of the Commission’s and the D.C. Circuit’s decisions, and misinterpretation of the relevant statutory and regulatory provisions.

First, AT&T raises the standard CLEC scare tactic that excluding virtual NXX calls from reciprocal (and ISP intercarrier) compensation “would deprive a CLEC to its statutory right to choose its POI with the ILEC.” AT&T Jan. 25 Ex Parte at 4-5. But there is no merit to this claim, which is based on AT&T’s erroneous characterization that Verizon’s argument is that “reciprocal compensation [does] not apply unless the CLEC ha[s] a POI in the same local calling area” as the calling party.” *Id.* at 4. Whether a CLEC is entitled to reciprocal (or ISP intercarrier) compensation for a particular call — under the Commission’s rules and as Verizon has consistently argued here — has *nothing* to do with the location of the CLEC’s POI. Instead, the existing reciprocal (and ISP intercarrier) compensation rules turn on the location of the *calling and called parties* (or the ISP). Indeed, there has never been any dispute that a call between two individuals who are actually located in the same local calling area *is* subject to reciprocal compensation, regardless of whether the CLEC’s POI is in that local calling area or on the other side of the LATA. This is also consistent with the statutory definition of “exchange access” as calls “between *stations* in different exchange[s],” not between *POIs* in different calling areas. 47 U.S.C. § 153(48) (emphasis added). Confirming that ILECs are not required to compensate CLECs for virtual NXX calls, therefore, will not require CLECs to change their POIs.

Second, Pac-West claims (at 8-9) that it is consistent with “industry practice” to treat virtual NXX calls as though they were, in fact, calls between two customers in the same local calling area. AT&T similarly claims that FX and virtual NXX traffic has “*always* been considered *non-toll* traffic.” AT&T Jan. 25 Ex Parte at 3-4 & nn.7, 9.

But the very orders that AT&T cites make clear that FX and virtual NXX customers are purchasing a “[t]oll [s]ubstitute [s]ervice[.]” and, therefore, are buying both a toll service — the “dedicated interexchange line” in the case of traditional FX — and “local distribution service.”³ And what Pac-West describes as “industry practice” is, in reality, the practice of certain CLECs,

² See Letter from Richard M. Rindler, Swidler Berlin LLP, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-98, 99-68, & 01-92 (filed Jan. 19, 2005) (“Pac-West Jan. 19 Ex Parte”); Letter from David L. Lawson, Sidley Austin Brown & Wood LLP, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 99-68, 01-92 (filed Jan. 25, 2005) (“AT&T Jan. 25 Ex Parte”).

³ Memorandum Opinion and Order, *In re Pacific Tel. & Tel. Co.*, 88 F.C.C.2d 934, ¶¶ 3, 9 (1981). PAETEC, in arguing that virtual NXX calls should be treated differently from traditional FX calls, concedes that traditional FX service has long been recognized as a “toll substitute” service. Letter from John B. Messenger, PAETEC Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 99-68 & 01-92, Attach. at 2 (filed Jan. 24, 2005).

one of which recently admitted that the purpose of virtual NXX service is to “prevent[] Verizon’s switching equipment from identifying [a] call as crossing a local calling area.”⁴

The industry has long faced the issue of interexchange calls that switching equipment and billing systems do not “identif[y] . . . as crossing a local calling area.” The consistent industry practice has *not* been, as Pac-West alleges, to pretend that these calls remain within a single local calling area. Instead, the industry has developed billing factors or modified rate structures to account for the fact that some calls that appear to be local are, in fact, interexchange calls. This includes, among other things, Feature Group A calls and leaky PBXs. In each case, the industry and the Commission have taken steps to ensure that intercarrier compensation reflects the physical location of the parties to the call, despite the fact that such calls appear to be “local” to established systems.⁵

The most common example today is wireless calls, where a comparison of telephone numbers might suggest that a call is between two individuals in the same MTA (the local calling area for wireless calls), but the wireless caller is, in fact, in another MTA or across the country. The Commission long ago held that the “*geographic locations* of the calling party and the called party determine whether a particular call” is subject to reciprocal compensation, irrespective of the telephone numbers. *Local Competition Order*⁶ ¶ 1044 (emphasis added). As Verizon has explained, for wireless calls, Verizon utilizes billing factors developed by the carrier from which Verizon receives a wireless call (whether a wireless carrier or, where such factors are provided,

⁴ Brief for Plaintiff-Appellant at 4, *Global NAPs, Inc. v. Verizon New England Inc.*, No. 04-4685 (2d Cir. filed Nov. 22, 2004). It is this purposeful tricking of existing ILEC systems by a CLEC that explains the fact that calls to a virtual NXX number are “indistinguishable” from “an ILEC’s billing system’s perspective.” Pac-West Jan. 19 Ex Parte at 8; *see also id.* at 8 n.39. But it is indisputable — and multiple state commissions have found — that *CLECs* can distinguish calls to their virtual NXX customers from calls to their other customers. *See, e.g.*, Order Denying Rehearing of Decision 03-05-075, *In re Verizon Cal., Inc.*, Decision 03-12-021, 2003 WL 23096888, at *6 (Cal. PUC Dec. 4, 2003) (“Pac-West is essentially arguing that it should be able to evade its financial responsibilities by avoiding collecting or maintaining information on the percentage of VNXX calls it delivers outside the originating exchange. The record shows, however, that there are methods that Pac-West could develop in order to have the ‘functioning capability’ to distinguish between VNXX and non-VNXX calls.”).

⁵ *See, e.g.*, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, *Amendments of Part 69 of the Commission’s Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers*, 6 FCC Rcd 4524, ¶ 66 (1991) (Feature Group A); Memorandum Opinion and Order, *MTS and WATS Market Structure*, 97 F.C.C.2d 834, 868 (1984) (leaky PBX).

⁶ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (“*Local Competition Order*”) (subsequent history omitted).

an interexchange carrier) to address the fact that the wireless caller's number may not reflect the caller's location.⁷ Pac-West ignores all of this evidence of industry practice.⁸

Pac-West, however, contends (at 9) that it would be inequitable to require CLECs to treat virtual NXX calls as the interexchange calls that they are. But there is no inequity in requiring CLECs to abide by the same rules that apply to all carriers — whether interexchange, wireless, or wireline — when they exchange calls that appear to be, but are not, intraexchange. In any event, Pac-West would have the Commission ignore that CLECs can — and do — charge their customers for the toll-free calling made possible by virtual NXX service. US LEC, for example, charges its virtual NXX customers a \$500 fixed charge and \$1,000 per month, above the amount those customers pay for local telephone service.⁹ There is nothing equitable about requiring Verizon to compensate a CLEC *on top of* the amounts the CLEC already receives from its virtual NXX customers.¹⁰

Instead, an equitable rule for the Commission to adopt would provide that ILECs are not required to pay reciprocal (or ISP intercarrier) compensation for virtual NXX calls *only if* the ILEC has offered to work with the CLECs in a given state to develop billing factors to exclude both foreign exchange and virtual NXX calls from the carriers' respective reciprocal (and ISP intercarrier) compensation bills. This would ensure that traditional FX and virtual NXX calls are treated the same — whether such calls are to voice customers or ISPs — and would provide carriers with the incentive to develop the necessary billing factors. This also would preserve the status quo under the Commission's current reciprocal (and ISP intercarrier) compensation rules while the Commission completes its comprehensive review of intercarrier compensation.

⁷ See Verizon Jan. 7 Ex Parte, Attach. at 2, 11-12.

⁸ AT&T, in contrast, recognizes the industry's treatment of wireless calls, but advocates that wireless and wireline calls should be subject to *different* rules — under which *interexchange* wireline calls must be treated as if they were actually *intraexchange* calls (based on a CLEC's number assignment practices) but interMTA wireless calls will be treated as such, no matter what a comparison of the telephone numbers suggests. See AT&T Jan. 25 Ex Parte at 7.

⁹ See, e.g., US LEC of Virginia L.L.C., Virginia S.C.C. No. 1 Tariff § 6.52 (effective Apr. 15, 1999).

¹⁰ And this does not account for the fact that virtual NXX service forces Verizon to perform interexchange transport without compensation. See Verizon Dec. 16 Ex Parte, Attach. 1 at 2-3; *id.*, Attach. 2 at 1-2. Pac-West suggests that these transport costs are irrelevant because a virtual NXX call “is handled and routed the same as any other local call.” Pac-West Jan. 19 Ex Parte at 8; see *id.* at 11-12. But Pac-West ignores that virtual NXX calls are also handled and routed in the same manner as *intraLATA toll calls* exchanged between an ILEC and a CLEC — and there is no dispute that, under the Commission's current rules, such calls are not subject to reciprocal compensation. The overwhelming majority of state commissions to consider the question have held that virtual NXX calls are more like intraLATA toll calls than intraexchange (or local) calls. See, e.g., Order, *Petition of Global NAPs, Inc. for Arbitration*, Docket No. 6742, at 42 (Vt. PSB Dec. 26, 2002) (holding that virtual NXX calls are “indistinguishable” from intraLATA toll calls).

Verizon notes that it continues to offer to work with CLECs to develop billing factors for traditional FX and virtual NXX traffic, but CLECs have repeatedly refused such offers.¹¹ For CLECs that have built their business around virtual NXX the reason is simple — calls by Verizon’s customers to these CLECs’ virtual NXX numbers account for the vast majority of the traffic these CLECs receive from Verizon.¹² In contrast, less than 1 percent of the calls that all CLECs send to Verizon are delivered to Verizon’s traditional FX customers.

Third, Pac-West and AT&T claim that the compensation regime the Commission established in the *ISP Remand Order* applies to *all* calls to ISPs, based on its view that the Commission held that “the *identity* of the called party as an ISP determine[s] the appropriate intercarrier compensation mechanism.” Pac-West Jan. 19 Ex Parte at 3; *see id.* at 2-6; AT&T Jan. 25 Ex Parte at 6-7. They are wrong.

As the Commission explained in its own order, it was addressing the question “whether reciprocal compensation obligations apply to the delivery of calls . . . to an ISP *in the same local calling area*.” *ISP Remand Order* ¶ 13 (emphasis added). The D.C. Circuit agreed, recognizing that, in the *ISP Remand Order*, the Commission was addressing “calls made to [ISPs] *located within the caller’s local calling area*.” *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002) (emphasis added), *cert. denied*, 538 U.S. 1012 (2003).¹³ The Commission’s focus on such calls is understandable, because that was the specific legal issue before it and, moreover, was the source of the regulatory arbitrage the Commission sought to remedy. That is because the Commission’s existing reciprocal compensation rules already excluded calls to ISPs in *other* local calling areas. Regardless of whether a call to an ISP terminates on the Internet rather than at an ISP’s server, a call to an ISP that is located in a different local calling area plainly does not originate and terminate in the same local calling area — and, therefore, was never subject to reciprocal compensation under the Commission’s rules.¹⁴

¹¹ Thus, there is no merit to Pac-West’s claim (at 2 n.5) that BellSouth is the only carrier to propose taking steps to exclude calls to an ILEC’s foreign exchange customers from reciprocal compensation bills. BellSouth’s success in doing so, however, puts the lie to claims by CLECs that it is impossible to exclude foreign exchange or virtual NXX calls from such bills. *See* Pac-West Jan. 19 Ex Parte at 9-10 (relying on Wireline Competition Bureau’s conclusion in the *Virginia Arbitration Order*, which is the subject of a pending petition for reconsideration, that virtual NXX calls cannot practically be distinguished from local calls).

¹² *See, e.g., Starpower Communications, LLC v. Verizon South Inc.*, 18 FCC Rcd 23625, ¶ 17 n.64 (2003) (“*Starpower Damages Order*”) (“Starpower has acknowledged that all of the [ISP-bound] traffic” it received from Verizon “was virtual NXX traffic”).

¹³ Pac-West (at 2 n.11) and AT&T (at 6) suggest that the D.C. Circuit’s reading of the *ISP Remand Order* can be dismissed as *dicta*. But the only court to consider this question disagreed, finding that the D.C. Circuit “was in no doubt that Verizon’s interpretation of this aspect of the [ISP] *Remand Order* is the correct one.” Memorandum Opinion and Order, *Global NAPs, Inc. v. Verizon New England Inc.*, No. 2:03-CV-97, at 6 (D. Vt. Aug. 5, 2004).

¹⁴ In addition, because interexchange calls to ISPs are both exchange access and information access, the Commission did not need to rely on its finding that ISP-bound traffic is information access to exclude such calls from the reciprocal compensation requirement. *See*

It is equally clear that the Commission's interim intercarrier compensation regime was addressed to calls to ISPs in the same local calling area. As an initial matter, the state commission decisions "requir[ing] the payment of reciprocal compensation for ISP-bound traffic," which were the source of the arbitrage opportunity the Commission addressed in the *ISP Remand Order*, were based on the notion that a call to an ISP terminates *locally*, at the ISP's server in the same local calling area as the calling party. *ISP Remand Order* ¶ 77; *see id.* ¶ 68. In addition, the 3:1 presumption the Commission adopted for identifying ISP-bound traffic is based only on the amount of *intraexchange* traffic that CLECs send to ILECs and, moreover, can be rebutted by a showing that calls above that ratio are, in fact, "*local traffic* delivered to non-ISP customers." *Id.* ¶ 79 (emphasis added). The Commission also preserved state commission determinations that calls to ISPs in the same local calling area are not subject to reciprocal compensation. *See id.* ¶ 80. None of these aspects of the *ISP Remand Order* would make sense if the Commission, as Pac-West and AT&T assert, had adopted a compensation regime that also applied to *interexchange* calls to ISPs, such as virtual NXX calls.¹⁵

Adoption of Pac-West's and AT&T's interpretation of the *ISP Remand Order*, moreover, would expand the very arbitrage opportunities that the Commission sought to mitigate. *See id.* ¶ 7 (explaining that the ISP intercarrier compensation regime "moves aggressively to eliminate arbitrage opportunities presented by the existing recovery mechanism for ISP-bound" calls); *id.* ¶ 77 ("Our primary goal at this time is to address the market distortions under the current intercarrier compensation regimes for ISP-bound traffic."); *id.* ¶ 81 ("[W]e seek to confine these market problems to the maximum extent while seeking an appropriate long-term resolution in the proceeding initiated by the companion *NPRM*."). That is because 24 of the 30 state commissions to consider the issue have correctly held that virtual NXX voice calls are not subject to reciprocal compensation. In those states, CLECs would have the incentive — made stronger by the elimination of the new market rule and growth caps in the *Core Forbearance Order*¹⁶ — to establish new virtual NXX arrangements to serve ISPs while ignoring voice customers, for which the CLECs would not receive intercarrier compensation. Indeed, an arrangement where CLECs receive *more* from ILECs for serving ISPs than for serving voice customers is directly contrary to the goal in the *ISP Remand Order* of *reducing* compensation for ISP-bound calls and to the

Order on Remand, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶¶ 46-47 & n.99 (1999) (finding that traffic can be both exchange access and information access); *ISP Remand Order* ¶ 42 & n.76 (same). AT&T, therefore, is wrong in arguing (at 6) that interexchange calls to ISPs would be subject to reciprocal compensation but for the Commission's determination that "information access" is not subject to § 251(b)(5).

¹⁵ Pac-West suggests (at 5) that Verizon's position "contradicts everything" it has said previously with respect to ISP-bound traffic. That is hogwash. Verizon's position is that the Commission's ISP intercarrier compensation regime is limited to calls to an ISP in the caller's local calling area — not, as Pac-West claims, because such calls terminate at the ISP, but because that is the specific issue the Commission was addressing in the *ISP Remand Order*.

¹⁶ Order, *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, 19 FCC Rcd 20179 (2004).

mirroring rule, which prevents the ISP intercarrier compensation rate from exceeding the reciprocal compensation rate.

The arbitrage opportunities are even more pronounced if the Commission adopts the CLEC position that, under the *ISP Remand Order*, “the identity of the called party as an ISP determine[s] the appropriate intercarrier compensation mechanism.” Pac-West Jan. 19 Ex Parte at 3; see AT&T Jan. 25 Ex Parte at 6. If that were correct, 1-800 and direct-dialed toll and long-distance calls to ISPs — which have long been subject to access charges — would instead be subject to the regime established in the *ISP Remand Order*, because in all such cases the call goes to an ISP. If this were the case, CLECs could dispense with virtual NXX and sell 1-800 service to their ISP customers, claiming that ILECs must pay intercarrier compensation on calls to those ISPs, even if the ISP is located across the country.

Fourth, as Verizon has demonstrated, virtual NXX calls to non-ISP customers are “exchange access” and, therefore, are not subject to reciprocal compensation under the Commission’s current rules.¹⁷ In particular, such calls — no different from traditional FX, 1-800, toll, and long-distance calls — satisfy the statutory definitions of “telephone toll service” and “exchange access.”¹⁸ That is because such calls travel “between stations in different exchange[s]” and they involve “a separate charge not included in contracts” for service within a single exchange. 47 U.S.C. § 153(16), (47), (48). Pac-West’s and AT&T’s claims that virtual NXX calls do not satisfy either of these conditions are without merit.

Pac-West (but not AT&T) contends that the word “station[,]” as used in § 153(48), refers to a customer’s telephone number and not its physical location. See Pac-West Jan. 19 Ex Parte at 6-7. But the only authority Pac-West cites is a decision interpreting a single GTE tariff — not the statute. See *id.* at 7 & n.29. In fact, it is plain that a “station” — as used in the statute and by the industry — is the physical location of a customer, not the telephone number that happens to be assigned to that customer. This is clear from other definitions in § 153, which, for example, provide that “foreign communication” is communication “from or to *any place* in the United

¹⁷ See Verizon Jan. 7 Ex Parte, Attach. at 4-6. AT&T claims (at 5) that the *Virginia Arbitration Order* and the *Starpower Damages Order* “establish that the existing rules do not preclude reciprocal compensation for CLEC virtual FX services.” But as the Commission itself acknowledged — and AT&T does not dispute — neither order answered the question whether the Commission’s rules require incumbents to compensate CLECs for virtual NXX calls. See Verizon Jan. 7 Ex Parte, Attach. at 3-4 & n.4 (quoting *Starpower Damages Order* and *Maryland/DC/West Virginia 271 Order*). In addition, the question is not whether the rules “preclude” carriers from agreeing to pay compensation on such calls — which is what the Commission, in the *Starpower Damages Order*, found that GTE had done — but whether incumbents *must* compensate CLECs for such calls when they are not willing to agree. In approving Verizon’s § 271 application in Maryland, the Commission held that its rules did not establish such a duty. See *id.*, Attach. at 3 (quoting *Maryland/DC/West Virginia 271 Order*).

¹⁸ Although such calls may be jurisdictionally interstate, Verizon is not relying on the Commission’s traditional end-to-end jurisdictional analysis. See Pac-West Jan. 19 Ex Parte at 7-8. Instead, virtual NXX calls are not subject to reciprocal compensation because they satisfy the statutory definition of “exchange access,” regardless of their jurisdictional status.

States to or from a foreign country, or between a station in the United States and a mobile *station located outside* the United States.” 47 U.S.C. § 153(17) (emphases added).¹⁹ The Commission, as well, has recognized that a station is a physical location that is distinct from a customer’s telephone number. Thus, in 1980, the Commission recognized that remote call forwarding — a precursor to virtual NXX²⁰ — “allows a call placed *to a telephone number in one exchange* to be automatically forwarded by telephone company central office equipment *to a telephone station designated by the customer in another exchange*.”²¹ All of this conforms to the industry-standard definition of “station” as the “telephone” itself, not a telephone number. *Newton’s Telecom Dictionary* 753 (19th ed. 2003).

Pac-West (at 7), this time joined by AT&T (at 2-3 & n.6), also claims that there is no “separate charge” for a virtual NXX call, because Verizon does not impose toll charges on its customer. But the Communications Act does not specify *which carrier* must impose the “separate charge.” 47 U.S.C. § 153(48). Indeed, there can be no serious dispute that “exchange access” includes toll-free calls where the *called party*, rather than the calling party, pays the separate charge. The most prominent example is 1-800 calls, which are toll-free to the caller (*i.e.*, no separate charge is imposed), but for which the 1-800 service provider imposes a separate charge on its customer for receiving the call. As a result of that separate charge, 1-800 calls meet the definition of telephone toll service and, in turn, the definition of exchange access.²² The same is true of interLATA FX calls, which the Commission has held are subject to access charges even though it is the called party that pays the separate charge.²³ For virtual NXX calls, as noted above, CLECs such as US LEC similarly impose explicit charges on their end-user customers — for the same right to offer toll-free calling as with 1-800 and interLATA FX service — in addition to the charges the CLECs impose for local telephone service.²⁴

¹⁹ See, e.g., *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 479 (1992) (“basic canon of statutory construction that identical terms within an Act bear the same meaning”).

²⁰ Indeed, US LEC has argued to state commissions that its virtual NXX service is, in fact, remote call forwarding. See Transcript of Hearing, *Petition of US LEC of Maryland, Inc. for Arbitration*, Case No. 8922, at 296:10 (Md. PSC Aug. 21, 2002).

²¹ Memorandum Opinion and Order, *In re AT&T Co.*, 84 F.C.C.2d 158, ¶ 126 (1980) (emphases added).

²² See, e.g., First Report and Order, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, 12 FCC Rcd 15982, ¶ 366 (1997).

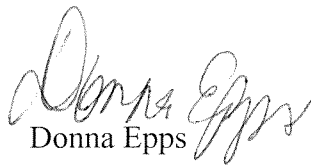
²³ See Memorandum Opinion and Order, *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, ¶¶ 71, 80 (1998), *recon. denied*, 15 FCC Rcd 7467 (2000).

²⁴ See also Pac-West Telecomm, Inc., Schedule Cal. CLC 1-T, § 8.1.5 (imposing recurring and non-recurring charges of \$10 and \$100, respectively, for each “100 Number Block” of “Local Access Numbers”); PAETEC Communications, Inc., Schedule Cal. P.U.C. No. 2, § E.2.5 (imposing recurring charge for “Foreign Exchange Service” of \$60 “[f]or 15 Rate Centers” and \$15 for “[e]ach additional Rate Center”); Global NAPs, Inc., Tariff FCC No. 1, §§ 10.2.4, 10.3 (imposing \$500 charge per PRI circuit used for virtual NXX by ISPs, in addition to any charges for “connectivity . . . between [GNAPs] switch . . . and the [ISP]”).

The fact that AT&T (at 3 & n.6) has made the unilateral business decision to provide virtual NXX service “as a part of certain multi-line business exchange services” does not change the analysis. For AT&T’s customers, the separate charge for the toll-free interexchange calls made possible through virtual NXX is implicit in AT&T’s flat rate. Nothing in the Communications Act requires that the “separate charge” — a term first adopted in 1934 — be a discrete line item on a customer’s bill. If AT&T were correct, no calls made by Verizon’s Freedom customers — who pay a flat fee for unlimited calling throughout the United States and Canada with no additional, per call charges — would qualify as toll calls. Likewise, under AT&T’s view, if a carrier packaged 1-800 service along with its local service at single, flat rate, it would no longer have to pay access charges on 1-800 calls to its customers, but could instead seek reciprocal (or ISP intercarrier) compensation from the originating carrier.²⁵

For all of these reasons, as well as those set forth in Verizon’s prior filings in these dockets, the Commission should confirm that neither reciprocal compensation nor ISP intercarrier compensation applies to virtual NXX calls.

Sincerely,



Donna Epps

cc:

Scott Bergmann
Jeff Carlisle
Jeff Dygert
Dan Gonzalez
Christopher Libertelli
Jennifer Manner
Steve Morris
Tamara Preiss
Jessica Rosenworcel
John Stanley

²⁵ Pac-West points to wireless calls and to wireline calls within the Washington, D.C. metropolitan area as examples of calls that cross local calling area boundaries but are subject to reciprocal compensation. *See* Pac-West Jan. 19 Ex Parte at 6. But the Commission’s rules for wireless calls, adopted pursuant to § 251(b)(5) *and* § 332, make clear that the local calling area for wireless calls is the MTA, not the state-commission established local calling areas for wireline calls. *See* 47 C.F.R. §§ 51.701(b)(2), 51.703(a). And Congress has provided that calls in the D.C. metropolitan area are to be treated as though they were intrastate calls, subject to state regulation, thereby permitting the establishment of a local calling area that encompasses the District as well as portions of Maryland and Virginia. *See* 47 U.S.C. § 221(b).